



Alerts

Plaintiff Not Required to Present Expert Testimony Pertaining to Reasonableness of Attorneys' Fees Incurred

April 25, 2012

Lawyers for the Profession® Alert

Schwartz v. Bloch, ___ So.3d ___, 2012 WL 1108408 (Fla. App. 4th Dist. 2012)

Brief Summary

The District Court of Appeal of the State of Florida, Fourth District, concluded that because plaintiff former client was seeking attorneys' fees and costs as an element of "wrongful act" damages, he was not required to present independent expert testimony as to the reasonableness of the attorneys' fees.

Complete Summary

In 2004, the former client consulted defendant lawyers for asset protection advice in light of his forthcoming marriage. Defendant lawyers discussed with the former client the possibility of obtaining a prenuptial agreement, but the former client informed defendant attorneys that such an agreement was not a viable option. Defendant lawyers then advised the former client that the most effective alternative would be for him to assign his interests in family businesses to other members of his family so as not to own those assets during the marriage.

The former client followed this advice and on September 23, 2004, assigned his interests in six business entities to his father. The former client married in December 2004. On January 4, 2006, the former client's father wrote a letter to the former client, purporting to remove the former client's authority to run one of the businesses. The letter further stated that the former client had been "removed from the bank accounts" and was "not authorized to sign checks on behalf of the company." Shortly thereafter, one of the former client's brothers told the former client that he would no longer have access to the bank accounts of the family businesses.

After a business-related feud with his father, the former client hired a second attorney and sued several members of his family, his former accountant, several of the family business entities, and defendant attorneys. The former client's claims against his family and his accountant settled in July 2007, but his legal malpractice action against defendant attorneys remained pending. At trial, the former client presented expert testimony that defendant attorneys breached duties owed to the former client by advising him to assign his assets to his father for no consideration, without advising him of other family members'

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Terrence P. McAvoy

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adverse interests. The former client sought “wrongful act” damages for the attorneys’ fees and costs he incurred in prosecuting the claims against his family and his former accountant. The second lawyer testified to the fees and costs he charged in prosecuting the former client’s claims. However, the former client presented no independent expert testimony as to the reasonableness of the attorneys’ fees.

The former client also sought damages for harm to his interests in various business entities. Although the former client sought damages relative to 12 entities, there were only six assignments executed in September 2004. The jury returned a verdict for the former client with respect to some of the entities, but for defendant attorneys as to all other entities. The jury awarded \$125,000 in damages for each of four entities, for a total of \$500,000. In addition, the jury awarded \$250,000 as reasonable and necessary attorneys’ fees, costs or expenses recoverable under the “wrongful act doctrine.”

Defendant lawyers filed a post-trial motion for judgment in accordance with their earlier motions for directed verdict, and for judgment notwithstanding the verdict. They argued, among other things, that the former client had failed to: (1) present expert testimony as to the reasonableness of his attorneys’ fees; and (2) properly prove his damages with respect to the loss of his business interests. The trial court granted the motion, vacated the damages awards, and entered final judgment in favor of defendant attorneys.

The appellate court reversed only that portion of the trial court’s post-trial order that set aside the jury’s award of \$250,000 in attorneys’ fees or costs because of the former client’s failure to present independent expert testimony to establish the reasonableness of the attorneys’ fees expended in representing the former client. The court held that such independent expert testimony was not required for fees which the former client incurred in the litigation with his family and sought as an element of his compensatory damages under the “wrongful act doctrine.”

The wrongful act doctrine provides that where “the wrongful act of the defendant has involved the claimant in litigation with others, and has placed the claimant in such relation with others as makes it necessary to incur expenses to protect its interests, such costs and expenses, including reasonable attorney’s fees upon appropriate proof, may be recovered as an element of damages.” *Martha A. Gottfried, Inc. v. Amster*, 511 So. 2d 595, 598 (Fla. 4th DCA 1987) (internal quotation omitted). This is an exception to the rule that attorneys’ fees are not recoverable in the absence of a statute, contract, or rule authorizing such an award.

The court held that because the former client was seeking fees and costs incurred in the litigation with his family as an element of his compensatory damages under the wrongful act doctrine, he was not required to present corroborating testimony from an independent expert.

Significance of Opinion

This case is significant because if a plaintiff is seeking attorneys’ fees incurred as a result of malpractice, he or she must generally present expert testimony as to the reasonableness and necessity of the attorneys’ fees incurred as a proximate result of the attorney’s alleged negligence. Here, the court held that an independent expert was not necessary. It should be noted, however, that the attorney who represented the former client testified at trial regarding the fees and costs charged to the former client.

For further information, please contact [Terrence P. McAvoy](#).

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